

Office Action Summary

Application No.

10/781,432

Applicant(s)

ZANDER ET AL.

Examiner

Laura C. Hill

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/28/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Interpretation

1. The 'first array of stiffening elements has a first, convergently arranged nose-end, and a first, relatively divergently arranged tail-end' as recited in claim 1 is interpreted to mean that the first array of stiffening elements move toward (converge) a 'nose-end' or first end and move away (diverge) from the 'tail end' or central region of the absorbent article. Likewise, the 'second array of stiffening elements' has a similar pattern on the absorbent article.
2. The term 'medial section' as recited in claim 1 is located in the deformation-control member (page 2 specification), but is not limited to an area adjacent a longitudinal axis of the absorbent article.
3. The term 'substantially linear' as recited in claim 19 and 'substantially curvilinear' as recited in claim 20 are interpreted that at least a portion of the stiffening elements contain at least a portion of straight and non-straight shapes.

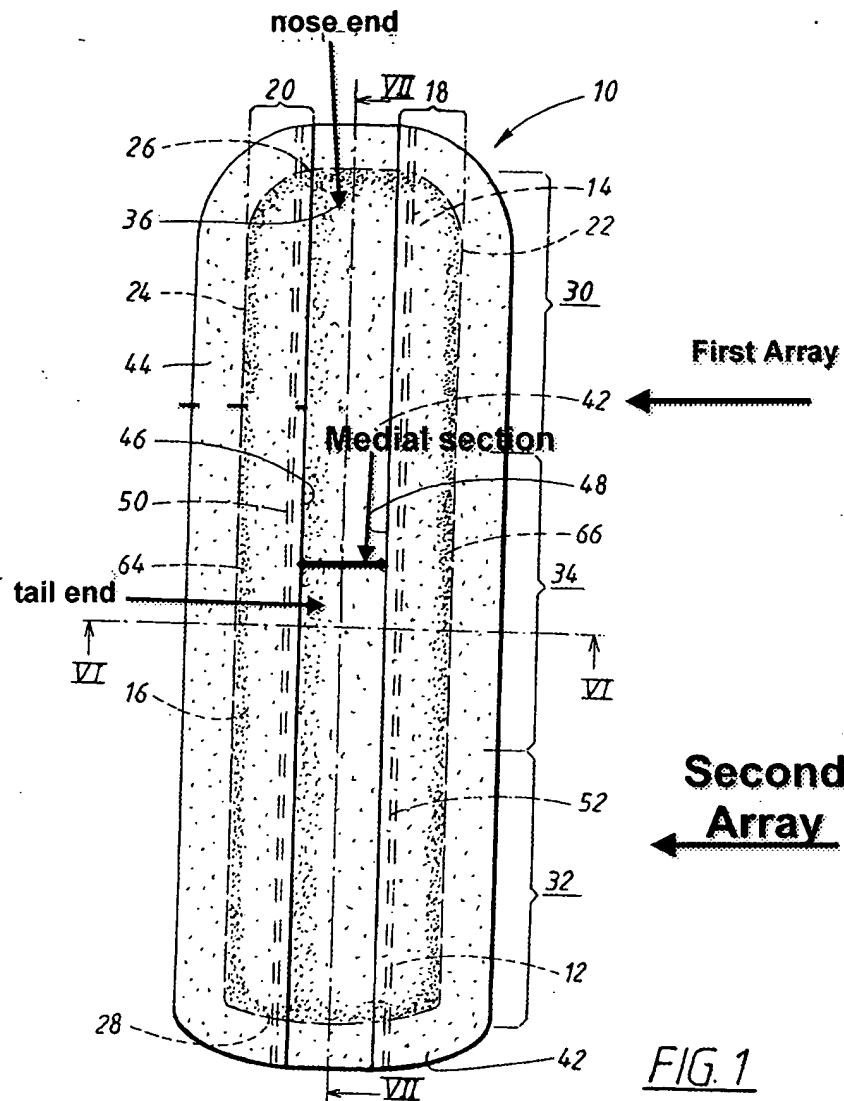
Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-2, 4, 9-11, 14-15, 17 and 19-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Drevik (US PG Pubs 2002/0040212). Regarding claim 1 Drevik discloses beads/stiffening elements 54 on elastic member/deformation-control members



50, 52 that serve as spacing means 60 in a direction from the center of the napkin to the longitudinal sides of the napkin and contain the claimed array, medial portion and nose/tail-end configurations (figure 1, paragraphs 0029, II. 1-6 and 0032, II. 4-9).
Regarding claim 2
 Drevik discloses a first nose-end of the first array of stiffening elements 50,52

positioned toward a central region, first tail-end positioned toward a first end region, second nose-end of the second array positioned toward a central region, and a second tail-end positioned toward a second end region of the article (figure 1).

Regarding claim 4 Drevik discloses absorbent article comprising absorbent core delimited by upper and lower surfaces, whereby a liquid permeable top sheet extends over upper surface and liquid barrier back sheet covers the lower surface of absorbent

core (paragraph 0011, ll. 2-10), and furthermore having the deformation-control member 50 providing at least a portion of the absorbent body (figure 7).

Regarding claims 9-11 Drevik discloses beads/stiffening elements that have a longer length dimension than width dimension and stiffening elements which are continuous along their length (axis VII) but some elements can also be discontinuous and located in an intermediate section/pocket 64 (figure 1).

Regarding claims 14-15, Drevik discloses longitudinal edges 22, 24 analogous to first base-side section and first complementary-side section, respectively, which are mirror images of one another (figure 1).

Regarding claim 17 Drevik discloses long cylinders 56 alongside beads 54 in elastic members, which are up to 50 mm long (paragraph 0039, ll. 1-2).

Regarding claims 19-20 Drevik discloses beads/stiffening elements that are substantially linear and substantially curvilinear (figure 1).

Regarding claims 21-23 Drevik discloses garment-facing upper surface/shaping layer 14 and body-side lower surface/supplemental layer 16 (paragraph 0025, ll. 3-6); and said beads/stiffening elements 54 on elastic member/deformation-control members 50, 52 further including channels/embossment elements 62 located on shaping layer 14 (paragraph 0029, ll. 10-14, figure 7).

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Hansen et al. (US 6,222,092). Hansen et al. discloses absorbent diaper 9 having a medial section and elastic gather strips/stiffened region 36,38 (col. 7, ll. 7-10);

Wherein said elastic gather strips/stiffened region 36,38 includes a first array of stiffening elements/slits 50 which form impediments to the flow of urine within the diaper when urine impinges against liner layer 12 and have a first and second array convergently arranged nose-end and a divergently arranged tail end; said first and second arrays avoiding intersecting the medial section; said second array are counter-positioned in relation to the first array (col. 7, ll. 20-27, col. 2, ll. 55-57, figure 1)

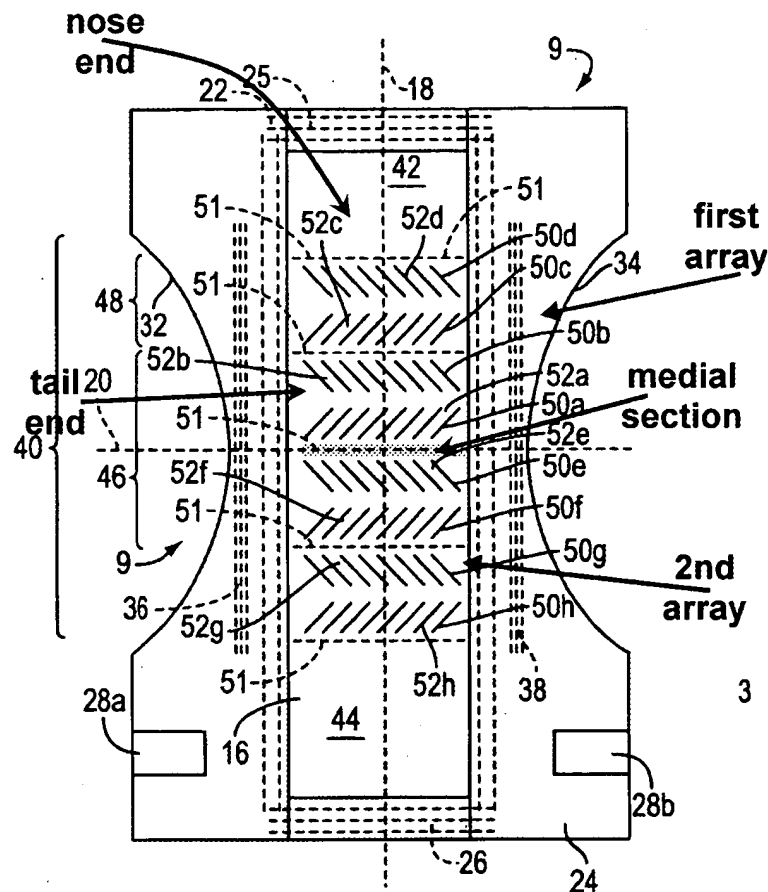


FIG. 1

6. Claims 3, 5-8, 13, 18, and 27 rejected under 35 U.S.C. 103(a) as being unpatentable over Drevik (US PG Pubs 2002/0040212). Regarding claim 3 Drevik

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discloses a string of beads/stiffening elements discussed above with respect to claim 1. Drevik further discloses a first and second array of channels (depressed regions)/embossing 62 located along longitudinal edge of absorbent core/shaping layer in central portion of absorbent article (paragraph 0011, ll. 13-16).

Regarding claim 5 Drevik discloses the deformation-control member 52 provides at least a garment-facing upper surface/shaping layer 14 of the absorbent body (paragraph 0025, ll. 3-6).

Regarding claim 6 Drevik discloses an absorbent article with an absorbent core 12 sandwiched between back sheet/baffle 42 and liquid permeable top sheet 36 (paragraph 0026, ll. 1-10, figure 7).

Regarding claims 7-8 Drevik does not expressly disclose the medial section length and width. The medial section length and width are result-effective variables since they depend on the size of the absorbent article. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Drevik to have the medial section length and width values claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 18 Drevik discloses a separation between adjacent stiffening elements to be at least 1 mm (paragraph 0044, ll. 1-2).

Regarding claim 27 Drevik discloses the absorbent article as discussed above with respect to claim 1. Drevik does not expressly disclose first or second alignment angle values of the first and second arrays, respectively. The first or second alignment

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angle values are result-effective variables since they depend on the spacing of the stiffening elements. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Drevik to have the first or second alignment angle values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

7. Based on withdrawn rejection of claims pertaining to Rasmussen et al., claims 12, 16 and 24-26 are hereby found unpatentable under 103(a) over Drevik (US PG Pubs 2002/0040212) as applied to claim 1, and further in view of Hansen et al. (US 6,222,092). Regarding claim 12 Drevik discloses an article with a first array of stiffening regions with embossment elements and a second array arranged in a longitudinally opposed position relative to the first array of elements as discussed above with respect to claim 3. Drevik et al. does not expressly disclose a fishbone configuration. Hansen et al. reference discloses an absorbent article with a fishbone array of stiffening elements/slits 50 as discussed above with respect to claim 1. Hansen et al. further discloses the elements in a fishbone array but does not expressly disclose the elements are embossed. One would be motivated to modify the arrays of stiffening elements of Drevik with the fishbone array of Hansen et al. since both references disclose absorbent articles with deformation control members. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the embossed stiffening regions of Drevik, thus providing a fishbone array of stiffening regions.

Regarding claim 13 Drevik discloses the first and second stiffening elements as discussed above with respect to claim 1 but does not expressly disclose a first and second alignment angle. Hansen et al. discloses the parallel slits of the first and second array of barrier elements within each row are disposed at an acute alignment angle of 30-60 degrees to the longitudinal axis (col. 7, ll. 30-34). One would be motivated to modify the stiffening elements of Drevik with the alignment angles of Hansen et al. since both references disclose absorbent articles with deformation control and stiffening members. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the stiffening elements of Drevik, thus providing an alignment angle.

Regarding claim 16 Drevik discloses the first and second stiffening elements as discussed above with respect to claim 1. Drevik does not expressly disclose a caliper percentage in the range claimed. A caliper percentage is a result-effective variable since it is dependent on the size of the absorbent article and the materials located within the absorbent. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Drevik with the caliper percentage values claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claims 24-26 Drevik reference discloses the first and second stiffening elements with a perimeter embossment as discussed above with respect to claims 1 and 3.

Response to Arguments

Applicant's arguments filed 6 June 2005 have been fully considered but not found persuasive.

8. In response to Applicant's argument with regards to claims 1-2, 9-11, 14-15, 17 and 19 under 102b by Drevik (US 2002/0040212) that 'Drevik fails to disclose or suggest an article which includes a deformation-control member having a selected stiffened region, in the configurations called for by Applicants' presented claims" (Remarks, page 8), see the discussion above with respect to the aforementioned claims.

9. In response to applicant's argument that there is no suggestion to combine the references with respect to claims 3-8, 18 and 20-23 under 103a over Drevik, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Drevik discloses an absorbent article which improves the direction and regulation of liquid flow with an equivalent stiffening means as discussed above with respect to the aforementioned claims.

10. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that

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any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

11. Applicant's arguments with respect to claims 1-7, 9-11, 13-16 and 18-26 based on Rasmussen et al. (PG Pub 2004/0176734), with respect to claims 1-6, 9-11, 16-17 and 21-23 based on Daniels et al. (US 6,319,239), with respect to claim 12 based on Drevik (PG Pub 2002/0040212) in view of Daniels et al., and with respect to Drevik in view of Rasmussen et al. have been considered but are moot in view of the new ground(s) of rejection.

12. In response to Applicant's arguments, see page 14 of Remarks, filed 2 June 2005, with respect to the rejection(s) of claim(s) claims 1-6, 9-11, 16-17 and 21 under Daniels et al. (US 6,319,239) have been fully considered and are persuasive.

Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Drevik as discussed above with respect to the aforementioned claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137.

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The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill
Examiner
Art Unit 3761

LCH



TATYANA ZALUKAEVA
PRIMARY EXAMINER

